

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 988
92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, March 4, 2004, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 988, adopted March 11, 2004.

Taken up for Perfection March 11, 2004. Bill declared Perfected and Ordered Printed, as amended.

3678S.02P

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 260.200, 260.270, 260.272, 260.273, 260.274, 260.275, 260.276, 260.278, and 260.342, RSMo, and to enact in lieu thereof nine new sections relating to scrap tires, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 260.200, 260.270, 260.272, 260.273, 260.274, 260.275, 260.276, 260.278, and 260.342, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 260.200, 260.270, 260.272, 260.273, 260.274, 260.275, 260.276, 260.278, and 260.279, to read as follows:

260.200. 1. The following words and phrases when used in sections 260.200 to 260.345 shall mean:

(1) "Alkaline-manganese battery" or "alkaline battery", a battery having a manganese dioxide positive electrode, a zinc negative electrode, an alkaline electrolyte, including alkaline-manganese button cell batteries intended for use in watches, calculators, and other electronic products, and larger-sized alkaline-manganese batteries in general household use;

(2) "Button cell battery" or "button cell", any small alkaline-manganese or mercuric-oxide battery having the size and shape of a button;

(3) "City", any incorporated city, town, or village;

(4) "Clean fill", uncontaminated soil, rock, sand, gravel, concrete, asphaltic concrete, cinderblocks, brick, minimal amounts of wood and metal, and inert solids as approved by rule

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

or policy of the department for fill, reclamation or other beneficial use;

(5) "Closure", the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volumes specified in the permit and preparing the area for long-term care;

(6) "Closure plan", plans, designs and relevant data which specify the methods and schedule by which the operator will complete or cease disposal operations, prepare the area for long-term care, and make the area suitable for other uses, to achieve the purposes of sections 260.200 to 260.345 and the regulations promulgated thereunder;

(7) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(8) "Demolition landfill", a solid waste disposal area used for the controlled disposal of demolition wastes, construction materials, brush, wood wastes, soil, rock, concrete and inert solids insoluble in water;

(9) "Department", the department of natural resources;

(10) "Director", the director of the department of natural resources;

(11) "District", a solid waste management district established under section 260.305;

(12) "Financial assurance instrument", an instrument or instruments, including, but not limited to, cash or surety bond, letters of credit, corporate guarantee or secured trust fund, submitted by the applicant to ensure proper closure and postclosure care and corrective action of a solid waste disposal area in the event that the operator fails to correctly perform closure and postclosure care and corrective action requirements, except that the financial test for the corporate guarantee shall not exceed one and one-half times the estimated cost of closure and postclosure. The form and content of the financial assurance instrument shall meet or exceed the requirements of the department. The instrument shall be reviewed and approved or disapproved by the attorney general;

(13) "Flood area", any area inundated by the one hundred year flood event, or the flood event with a one percent chance of occurring in any given year;

(14) "Household consumer", an individual who generates used motor oil through the maintenance of the individual's personal motor vehicle, vessel, airplane, or other machinery powered by an internal combustion engine;

(15) "Household consumer used motor oil collection center", any site or facility that accepts or aggregates and stores used motor oil collected only from household consumers or farmers who generate an average of twenty-five gallons per month or less of used motor oil

in a calendar year. This section shall not preclude a commercial generator from operating a household consumer used motor oil collection center;

(16) "Household consumer used motor oil collection system", any used motor oil collection center at publicly owned facilities or private locations, any curbside collection of household consumer used motor oil, or any other household consumer used motor oil collection program determined by the department to further the purposes of sections 260.200 to 260.345;

(17) "Infectious waste", waste in quantities and characteristics as determined by the department by rule, including isolation wastes, cultures and stocks of etiologic agents, blood and blood products, pathological wastes, other wastes from surgery and autopsy, contaminated laboratory wastes, sharps, dialysis unit wastes, discarded biologicals known or suspected to be infectious; provided, however, that infectious waste does not mean waste treated to department specifications;

(18) "Lead-acid battery", a battery designed to contain lead and sulfuric acid with a nominal voltage of at least six volts and of the type intended for use in motor vehicles and watercraft;

(19) "Major appliance", clothes washers and dryers, water heaters, trash compactors, dishwashers, conventional ovens, ranges, stoves, woodstoves, air conditioners, refrigerators and freezers;

(20) "Mercuric-oxide battery" or "mercury battery", a battery having a mercuric-oxide positive electrode, a zinc negative electrode, and an alkaline electrolyte, including mercuric-oxide button cell batteries generally intended for use in hearing aids and larger size mercuric-oxide batteries used primarily in medical equipment;

(21) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

(22) "Motor oil", any oil intended for use in a motor vehicle, as defined in section 301.010, RSMo, train, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion engine;

(23) "Motor vehicle", as defined in section 301.010, RSMo;

(24) "Operator" and "permittee", anyone so designated, and shall include cities, counties, other political subdivisions, authority, state agency or institution, or federal agency or institution;

(25) "Permit modification", any permit issued by the department which alters or modifies the provisions of an existing permit previously issued by the department;

(26) "Person", any individual, partnership, corporation, association, institution, city, county, other political subdivision, authority, state agency or institution, or federal agency or institution;

(27) "Postclosure plan", plans, designs and relevant data which specify the methods and schedule by which the operator shall perform necessary monitoring and care for the area after closure to achieve the purposes of sections 260.200 to 260.345 and the regulations promulgated thereunder;

(28) "Recovered materials", those materials which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing;

(29) "Recycled content", the proportion of fiber in a newspaper which is derived from postconsumer waste;

(30) "Recycling", the separation and reuse of materials which might otherwise be disposed of as solid waste;

(31) "Resource recovery", a process by which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture;

(32) "Resource recovery facility", a facility in which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture;

(33) "Sanitary landfill", a solid waste disposal area which accepts commercial and residential solid waste;

(34) "Scrap tire", a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

(35) "Scrap tire collection center", a site where waste tires are collected prior to being offered for recycling or processing and where fewer than five hundred tires are kept on site on any given day;

(36) "Scrap tire end-user facility", a site where waste tires are used as a fuel or fuel supplement or converted into a useable product. Baled or compressed tires used in structures, or used at recreational facilities, or used for flood or erosion control shall be considered an end use;

(37) "Scrap tire generator", a person who sells tires at retail or any other person, firm, corporation, or government entity that generates waste tires;

(38) "Scrap tire processing facility", a site where tires are reduced in volume by shredding, cutting, chipping or otherwise altered to facilitate recycling, resource recovery or disposal;

(39) "Scrap tire site", a site at which five hundred or more waste tires are accumulated, but not including a site owned or operated by a waste tire end-user that burns waste tires for the generation of energy or converts waste tires to a useful product;

[(34)] (40) "Solid waste", garbage, refuse and other discarded materials including,

but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in sections 260.360 to 260.432, recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting;

[(35)] (41) "Solid waste disposal area", any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing, recreational, or governmental operations;

[(36)] (42) "Solid waste fee", a fee imposed pursuant to sections 260.200 to 260.345 and may be:

- (a) A solid waste collection fee imposed at the point of waste collection; or
- (b) A solid waste disposal fee imposed at the disposal site;

[(37)] (43) "Solid waste management area", a solid waste disposal area which also includes one or more of the functions contained in the definitions of recycling, resource recovery facility, waste tire collection center, waste tire processing facility, waste tire site or solid waste processing facility, excluding incineration;

[(38)] (44) "Solid waste management system", the entire process of managing solid waste in a manner which minimizes the generation and subsequent disposal of solid waste, including waste reduction, source separation, collection, storage, transportation, recycling, resource recovery, volume minimization, processing, market development, and disposal of solid wastes;

[(39)] (45) "Solid waste processing facility", any facility where solid wastes are salvaged and processed, including:

- (a) A transfer station; or
- (b) An incinerator which operates with or without energy recovery but excluding waste tire end-user facilities; or
- (c) A material recovery facility which operates with or without composting;

[(40)] (46) "Solid waste technician", an individual who has successfully completed training in the practical aspects of the design, operation and maintenance of a permitted solid waste processing facility or solid waste disposal area in accordance with sections 260.200 to 260.345;

[(41)] (47) "Tire", a continuous solid or pneumatic rubber covering encircling the wheel of any self-propelled vehicle not operated exclusively upon tracks, or a trailer as defined in chapter 301, RSMo, except farm tractors and farm implements owned and operated by a family farm or family farm corporation as defined in section 350.010, RSMo;

[(42)] (48) "Used motor oil", any motor oil which, as a result of use, becomes unsuitable for its original purpose due to loss of original properties or the presence of impurities, but used motor oil shall not include ethylene glycol, oils used for solvent purposes, oil filters that have been drained of free flowing used oil, oily waste, oil recovered from oil

tank cleaning operations, oil spilled to land or water, or industrial nonlube oils such as hydraulic oils, transmission oils, quenching oils, and transformer oils;

[(43)] (49) "Utility waste landfill", a solid waste disposal area used for fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

[(44)] "Waste tire", a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

(45) "Waste tire collection center", a site where waste tires are collected prior to being offered for recycling or processing and where fewer than five hundred tires are kept on site on any given day;

(46) "Waste tire end-user facility", a site where waste tires are used as a fuel or fuel supplement or converted into a useable product. Baled or compressed tires used in structures, or used at recreational facilities, or used for flood or erosion control shall be considered an end use;

(47) "Waste tire generator", a person who sells tires at retail or any other person, firm, corporation, or government entity that generates waste tires;

(48) "Waste tire processing facility", a site where tires are reduced in volume by shredding, cutting, chipping or otherwise altered to facilitate recycling, resource recovery or disposal;

(49) "Waste tire site", a site at which five hundred or more waste tires are accumulated, but not including a site owned or operated by a waste tire end-user that burns waste tires for the generation of energy or converts waste tires to a useful product;]

(50) "Yard waste", leaves, grass clippings, yard and garden vegetation and Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

2. For the purposes of section 260.200 and sections 260.270 to 260.278 and any rules in place as of the effective date of this section or promulgated pursuant to said sections, the term "scrap" shall be used synonymously with and in place of "waste", as it applies only to scrap tires.

260.270. 1. (1) It shall be unlawful for any person to haul for commercial profit, collect, process, or dispose of [waste] **scrap** tires in the state except as provided in this section. This section shall not be construed to prohibit [waste] **scrap** tires from being hauled to a lawfully operated facility in another state. [Waste] **Scrap** tires shall be collected at a [waste] **scrap** tire site, [waste] **scrap** tire processing facility, [waste] **scrap** tire end-user facility, or a [waste] **scrap** tire collection center. A violation of this subdivision shall be a class C misdemeanor for the first violation. A second and each subsequent violation shall be a class A misdemeanor. A third and each subsequent violation, in addition to other penalties authorized by law, may be punishable by a fine not to exceed five thousand dollars and restitution may be ordered by the court.

(2) A person shall not maintain a [waste] **scrap** tire site unless the site is permitted by the department of natural resources for the proper and temporary storage of [waste] **scrap** tires or the site is an integral part of the person's permitted [waste] **scrap** tire processing facility or registered [waste] **scrap** tire end-user facility. No new [waste] **scrap** tire sites shall be permitted by the department after August 28, 1997, unless they are located at permitted [waste] **scrap** tire processing facilities or registered [waste] **scrap** tire end-user facilities. A person who maintained a [waste] **scrap** tire site on or before August 28, 1997, shall not accept any quantity of additional [waste] **scrap** tires at such site after August 28, 1997, unless the site is an integral part of the person's [waste] **scrap** tire processing or end-user facility, or unless the person who maintains such site can verify that a quantity of [waste] **scrap** tires at least equal to the number of additional [waste] **scrap** tires received was shipped to a [waste] **scrap** tire processing or end-user facility within thirty days after receipt of such additional [waste] **scrap** tires.

(3) A person shall not operate a [waste] **scrap** tire processing facility unless the facility is permitted by the department. A person shall not maintain a [waste] **scrap** tire end-user facility unless the facility is registered by the department. The inventory of unprocessed [waste] **scrap** tires on the premises of a [waste] **scrap** tire processing or end-user facility shall not exceed the estimated inventory that can be processed or used in six months of normal and continuous operation. This estimate shall be based on the volume of tires processed or used by the facility in the last year or the manufacturer's estimated capacity of the processing or end-user equipment. This estimate may be increased from time to time when new equipment is obtained by the owner of the facility, and shall be reduced if equipment used previously is removed from active use. The inventory of processed [waste] **scrap** tires on the premises of a [waste] **scrap** tire processing or end-user facility shall not exceed two times the permitted inventory of an equivalent volume of unprocessed [waste] **scrap** tires.

(4) Any person selling new, used, or remanufactured tires at retail shall accept, at the point of transfer, in a quantity equal to the number of tires sold, [waste] **scrap** tires from customers, if offered by such customers. Any person accepting [waste] **scrap** tires may charge a reasonable fee reflecting the cost of proper management of any [waste] **scrap** tires accepted[; except that the fee shall not exceed two dollars per waste tire for any tire designed for a wheel of a diameter of sixteen inches or less] and which tire is required to be accepted on a one-for-one basis at the time of a retail sale pursuant to this subdivision. All tire retailers or other businesses that generate [waste] **scrap** tires shall use a [waste] **scrap** tire hauler permitted by the department, except that businesses that generate or accept [waste] **scrap** tires in the normal course of business may haul such [waste] **scrap** tires without a permit, if such hauling is performed without any consideration and such business maintains records on the [waste] **scrap** tires hauled as required by sections 260.270 to

260.276. Retailers shall not be liable for illegal disposal of [waste] **scrap** tires after such [waste] **scrap** tires are delivered to a [waste] **scrap** tire hauler, [waste] **scrap** tire collection center, [waste] **scrap** tire site, [waste] **scrap** tire processing facility or [waste] **scrap** tire end-user facility if such entity is permitted by the department of natural resources.

(5) It shall be unlawful for any person to transport [waste] **scrap** tires for consideration within the state without a permit.

(6) [Waste] **Scrap** tires may not be deposited in a landfill unless the tires have been cut, chipped or shredded.

2. Within six months after August 28, 1990, owners and operators of any [waste] **scrap** tire site shall provide the department of natural resources with information concerning the site's location, size, and approximate number of [waste] **scrap** tires that have been accumulated at the site and shall initiate steps to comply with sections 260.270 to 260.276.

3. The department of natural resources shall promulgate rules and regulations pertaining to collection, storage and processing and transportation of [waste] **scrap** tires and such rules and regulations shall include:

(1) Methods of collection, storage and processing of [waste] **scrap** tires. Such methods shall consider the general location of [waste] **scrap** tires being stored with regard to property boundaries and buildings, pest control, accessibility by fire-fighting equipment, and other considerations as they relate to public health and safety;

(2) Procedures for permit application and permit fees for [waste] **scrap** tire sites and commercial [waste] **scrap** tire haulers, and by January 1, 1996, procedures for permitting of [waste] **scrap** tire processing facilities and registration of [waste] **scrap** tire end-user facilities. The only purpose of such registration shall be to provide information for the documentation of [waste] **scrap** tire handling as described in subdivision (5) of this subsection, and registration shall not impose any additional requirements on the owner of a [waste] **scrap** tire end-user facility;

(3) Requirements for performance bonds or other forms of financial assurance for [waste] **scrap** tire sites, **scrap** tire end-user facilities, and **scrap** tire processing facilities;

(4) Exemptions from the requirements of sections 260.270 to 260.276; and

(5) By January 1, 1996, requirements for record-keeping procedures for retailers and other businesses that generate [waste] **scrap** tires, [waste] **scrap** tire haulers, [waste] **scrap** tire collection centers, [waste] **scrap** tire sites, [waste] **scrap** tire processing facilities, and [waste] **scrap** tire end-user facilities. Required record keeping shall include the source and number or weight of tires received and the destination and number of tires or weight of tires or tire pieces shipped or otherwise disposed of and such records shall be maintained for at least three years following the end of the calendar year of such activity. Detailed record keeping shall not be required where any charitable, fraternal, or other nonprofit organization

conducts a program which results in the voluntary cleanup of land or water resources or the turning in of [waste] **scrap** tires.

4. Permit fees for [waste] **scrap** tire sites and commercial [waste] **scrap** tire haulers shall be established by rule and shall not exceed the cost of administering sections 260.270 to 260.275. Permit fees shall be deposited into an appropriate subaccount of the solid [waste] **scrap** management fund.

5. The department shall:

(1) Encourage the voluntary establishment of [waste] **scrap** tire collection centers at retail tire selling businesses and [waste] **scrap** tire processing facilities; and

(2) Investigate, locate and document existing sites where tires have been or currently are being accumulated, and initiate efforts to bring these sites into compliance with rules and regulations promulgated pursuant to the provisions of sections 260.270 to 260.276.

6. Any person licensed as an auto dismantler and salvage dealer under chapter 301, RSMo, may without further license, permit or payment of fee, store but shall not bury on his property, up to five hundred [waste] **scrap** tires that have been chipped, cut or shredded, if such tires are only from vehicles acquired by him, and such tires are stored in accordance with the rules and regulations adopted by the department pursuant to this section. Any tire retailer or wholesaler may hold more than five hundred [waste] **scrap** tires for a period not to exceed thirty days without being permitted as a [waste] **scrap** tire site, if such tires are stored in a manner which protects human health and the environment pursuant to regulations adopted by the department.

7. Notwithstanding any other provisions of sections 260.270 to 260.276, a person who leases or owns real property may use [waste] **scrap** tires for soil erosion abatement and drainage purposes in accordance with procedures approved by the department, or to secure covers over silage, hay, straw or agricultural products.

8. The department of transportation shall, beginning July 1, 1991, undertake, as part of its currently scheduled highway improvement projects, demonstration projects using recovered rubber from [waste] **scrap** tires as surfacing material, structural material, subbase material and fill, consistent with standard engineering practices. The department shall evaluate the efficacy of using recovered rubber in highway improvements, and shall encourage the modification of road construction specifications, when possible, for the use of recovered rubber in highway improvement projects.

9. The director may request a prosecuting attorney to institute a prosecution for any violation of this section. In addition, the prosecutor of any county or circuit attorney of any city not within a county may, by information or indictment, institute a prosecution for any violation of this section.

260.272. Processed [waste] **scrap** tires and recycled rubber chips may be used in the design and operation of sanitary landfills, including use of such tires and rubber chips as

daily cover. The department of natural resources may promulgate rules to implement this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

260.273. 1. Any person purchasing a new tire may present to the seller the used tire or remains of such used tire for which the new tire purchased is to replace.

2. A fee for each new tire sold at retail shall be imposed on any person engaging in the business of making retail sales of new tires within this state. The fee shall be charged by the retailer to the person who purchases a tire for use and not for resale. Such fee shall be imposed at the rate of fifty cents for each new tire sold **before July 1, 2009. On or after July 1, 2009, such fee shall be imposed at the rate of twenty-five cents for each new tire sold.**

Such fee shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the tires have been computed. The fee imposed, less six percent of fees collected, which shall be retained by the tire retailer as collection costs, shall be paid to the department of revenue in the form and manner required by the department of revenue and shall include the total number of new tires sold during the preceding month. The department of revenue shall promulgate rules and regulations necessary to administer the fee collection and enforcement. The terms "sold at retail" and "retail sales" do not include the sale of new tires to a person solely for the purpose of resale, if the subsequent retail sale in this state is to the ultimate consumer and is subject to the fee.

3. The department of revenue shall administer, collect and enforce the fee authorized pursuant to this section pursuant to the same procedures used in the administration, collection and enforcement of the general state sales and use tax imposed pursuant to chapter 144, RSMo, except as provided in this section. The proceeds of the new tire fee, less **[four] one** percent of the proceeds, which shall be retained by the department of revenue as collection costs, shall be transferred by the department of revenue into an appropriate subaccount of the solid waste management fund, created pursuant to section 260.330.

4. **[Up to five percent of the revenue available may be allocated, upon appropriation, to the department of natural resources to be used cooperatively with the department of elementary and secondary education for the purposes of developing educational programs and curriculum pursuant to section 260.342.**

5. Up to twenty-five percent of the moneys received pursuant to this section may,

upon appropriation, be used to administer the programs imposed by this section. Up to five percent of the moneys received under this section may, upon appropriation, be used for the grants authorized in subdivision (2) of subsection 6 of this section and authorized in section 260.274. All remaining moneys shall be allocated, upon appropriation, for the projects authorized in section 260.276.

6.] Prior to July 1, 2009, a portion of the revenue transferred into the subaccount of the solid waste management fund pursuant to subsection 3 of this section shall be allocated, upon appropriation, to the department of natural resources for the purpose of removal of scrap tires from illegal tire dumps and related administrative costs, including but not limited to permitting and enforcement, as follows: for fiscal year 2005, up to seventy-five percent of the revenue shall be allocated for such purpose; for fiscal year 2006, up to fifty percent of the revenue shall be allocated for such purpose; for fiscal year 2007, up to twenty-five percent of the revenue shall be allocated for such purpose; for fiscal year 2008, up to twenty percent of the revenue shall be allocated for such purpose; and for fiscal year 2009, ten percent of the revenue shall be allocated to the department for such purpose. On or after July 1, 2009, and for the subsequent five years after, one half of the revenue transferred into the subaccount of the solid waste management fund pursuant to subsection 3 of this section shall be allocated, upon appropriation, to the department of natural resources for the purpose of funding solid waste districts throughout the state. These funds shall be distributed in a manner so that each solid waste district operates at a minimum funding level of seventy-five thousand dollars from all state sources for each fiscal year. At the point at which such districts are operating at this level, all surplus revenue transferred into the subaccount of the solid waste management fund pursuant to subsection 3 of this section shall be equally apportioned to the solid waste districts throughout the state. In any fiscal year, the department of natural resources shall not spend more than twenty percent of revenue allocated on administrative costs.

5. In each fiscal year, the portion of revenue in the subaccount of the solid waste management fund deposited pursuant to subsection 3 of this section not appropriated to the department of natural resources shall be equally allocated between the department of economic development and the school district safe surfacing trust fund to be used primarily for the development, creation, and promotion of innovative products made from recycled scrap tires.

6. There is hereby created within the solid waste management fund created pursuant to section 260.330, a subaccount, the "School District Safe Surfacing Trust Fund", which shall consist of money deposited in the fund pursuant to subsection

5 of this section. The fund shall be administered by the department of economic development. Moneys in the fund shall be appropriated to individual school districts to be used solely for the construction of safe playground surfacing made from scrap tires.

7. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

8. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

9. The department of natural resources shall promulgate, by rule, a statewide plan for the use of moneys received pursuant to this section to accomplish the following:

- (1) Removal of [waste] **scrap** tires from illegal tire dumps; **and**
- (2) [Providing grants to persons that will use products derived from waste tires, or used waste tires as a fuel or fuel supplement; and
- (3)] Resource recovery activities conducted by the department pursuant to section 260.276.

10. The department of natural resources shall prepare an annual report on scrap tire removal efforts with information on, but not limited to, total numbers of scrap tires removed from illegal dumps throughout the state, costs of administering and implementing the removal efforts, estimated numbers for future removal efforts, and estimated costs related to those efforts. The report shall be submitted by February first each year to the governor and the general assembly.

[7.] 11. The fee imposed in subsection 2 of this section shall terminate January 1, [2004] 2009.

260.274. 1. The department of economic development [and], the environmental improvement and energy resources authority, **and the Missouri development finance board** shall administer a program to provide incentive grants [for capital expenditures to convert existing facilities] for the purpose of using [waste] **scrap** tires [as a fuel or fuel supplement or products from waste tires] **for the development, creation, and promotion of innovative products made from recycled scrap tires including, but not limited to, highway improvement demonstration projects as referred to in subsection 8 of section 260.270, RSMo.** Any person, other than a state agency, who meets eligibility requirements established by the department of economic development by rule may apply for such grants. No grant may be awarded for an activity which receives less than forty percent of its tires from Missouri [waste] **scrap** tire sites, retailers or residents. The burden of proof shall be on the applicant to show that eligibility requirements have been met.

2. For the purpose of establishing eligibility requirements, [and] application

priorities, **and reporting requirements for grant recipients**, the [director] **department of economic development** shall create an advisory council consisting of members of the tire industry, the general public, **and the department of natural resources**.

3. The department of economic development shall prepare an annual report on incentive grants awarded for the development, creation, and promotion of innovative products made from recycled scrap tires, with information on, but not limited to, number of grants awarded, individual grant objectives and products, total moneys awarded in grants, and duration of project time for grants awarded during that fiscal year. Administration costs for the department of economic development shall be included in the annual report submitted by February first each year to the governor and general assembly. In any fiscal year, the department of economic development shall not spend more than fifteen percent of revenue allocated on administrative costs.

260.275. 1. Each operator of a [waste] **scrap** tire site shall ensure that the area is properly closed upon cessation of operations. The department of natural resources may require that a closure plan be submitted with the application for a permit. The closure plan, as approved by the department, shall include at least the following:

(1) A description of how and when the area will be closed;

(2) The method of final disposition of any [waste] **scrap** tires remaining on the site at the time notice of closure is given to the department.

2. The operator shall notify the department at least ninety days prior to the date he expects closure to begin. No [waste] **scrap** tires may be received by the [waste] **scrap** tire site after the date closure is to begin.

3. The permittee shall provide a financial assurance instrument in such an amount and form as prescribed by the department to ensure that, upon abandonment, cessation or interruption of the operation of the site, an approved closure plan is completed. The amount of the financial assurance instrument shall be based upon the current costs of similar cleanups using data from actual [waste] **scrap** tire cleanup project bids received by the department to remediate [waste] **scrap** tire sites of similar size. If [waste] **scrap** tires are accumulated at a solid [waste] **scrap** management area, the existing financial assurance instrument filed for the solid [waste] **scrap** disposal area may be applied to the requirements of this section. Any interest that accrues to any financial assurance instrument established pursuant to this section shall remain with that instrument and shall be applied against the operator's obligation under this section until the instrument is released by the department. The director shall authorize the release of the financial assurance instrument after the department has been notified by the operator that the site has been closed, and after inspection, the department approves closure of the [waste] **scrap** tire site.

4. If the operator of a [waste] **scrap** tire site fails to properly implement the closure

plan, the director shall order the operator to implement such plan, and take other steps necessary to assure the proper closure of the site pursuant to section 260.228 and this section.

260.276. 1. The department of natural resources shall, subject to appropriation, conduct resource recovery or nuisance abatement activities designed to reduce the volume of [waste] **scrap** tires or alleviate any nuisance condition at any site if the owner or operator of such a site fails to comply with the rules and regulations authorized under section 260.270, or if the site is in continued violation of such rules and regulations. The department shall give first priority to cleanup of sites owned by persons who present satisfactory evidence that such persons were not responsible for the creation of the nuisance conditions or any violations of section 260.270 at the site.

2. The department may ask the attorney general to initiate a civil action to recover from any persons responsible the reasonable and necessary costs incurred by the department for its nuisance abatement activities and its legal expenses related to the abatement; except that in no case shall the attorney general seek to recover cleanup costs from the owner of the property if such person presents satisfactory evidence that such person was not responsible for the creation of the nuisance condition or any violation of section 260.270 at the site.

3. The department shall allow any person, firm, corporation, state agency, charitable, fraternal, or other nonprofit organization to bid on a contract for each resource recovery or nuisance abatement activity authorized under this section. The contract shall specify the cost per tire for delivery to a registered [waste] **scrap** tire processing or end-user facility, and the cost per tire for processing. The recipient or recipients of any contract shall not be compensated by the department for the cost of delivery and the cost of processing for each tire until such tire is delivered to a registered [waste] **scrap** tire processing or end-user facility and the contract recipient has provided proof of delivery to the department. Any charitable, fraternal, or other nonprofit organization which voluntarily cleans up land or water resources may turn in [waste] **scrap** tires collected in the course of such cleanup under the rules and regulations of the department.

260.278. 1. A person who has, within the preceding twenty-four months, been found guilty or pleaded guilty to a violation of section 260.270 which involves the transport of [waste] **scrap** tires may not be granted a permit to transport [waste] **scrap** tires unless the person seeking the permit has provided to the department a performance bond or letter of credit as provided under this section.

2. The bond or letter shall be conditioned upon faithful compliance with the terms and conditions of the permit and section 260.270 and shall be in the amount of ten thousand dollars.

3. Such performance bond, placed on file with the department, shall be in one of the following forms:

(1) A performance bond, payable to the department and issued by an institution authorized to issue such bonds in this state; or

(2) An irrevocable letter of credit issued in favor of and payable to the department from a commercial bank or savings and loan having an office in the state of Missouri.

4. Upon a determination by the department that a person has violated the terms and conditions of the permit or section 260.270, the department shall notify the person that the bond or letter of credit shall be forfeited and the moneys placed in an appropriate subaccount of the solid waste management fund, created under section 260.330, for remedial action.

5. The department shall expend whatever portion of the bond or letter of credit necessary to conduct resource recovery or nuisance abatement activities to alleviate any condition resulting from a violation of section 260.270 or the terms and conditions of a permit.

6. The requirement for a person to provide a performance bond or a letter of credit under this section shall cease for that person after two consecutive years in which the person has not been found guilty or pleaded guilty to a violation of section 260.270.

260.279. In issuing contracts for the performance of any job or service for the removal or clean up of waste tires pursuant to chapter 260, the department of natural resources shall, in addition to the requirements of sections 34.073 and 34.076, RSMo, and any other points awarded during the evaluation process, give to any vendor that meets one or more of the following factors a five percent preference and ten bonus points for each factor met:

(1) The bid is submitted by a vendor that has resided or maintained its headquarters or principle place of business in Missouri continuously for the four years immediately preceding the date on which the bid is submitted;

(2) The bid is submitted by a nonresident corporation vendor that has an affiliate or subsidiary that employs at least twenty Missouri residents and has maintained its headquarters or principle place of business in Missouri continuously for the four years immediately preceding the date on which the bid is submitted;

(3) The bid is submitted by a vendor that resides or maintains its headquarters or principle place of business in Missouri and, for the purposes of completing the bid project, employs an average of at least seventy-five percent Missouri residents continuously over the entire term of the project. Such residents shall have resided in the state continuously for at least two years immediately preceding the date on which the bid is submitted. Such vendor shall provide reasonable and reliable verification as to comply with the residency requirements established in this section and shall submit a written claim for preference at the time the bid is submitted;

(4) The bid is submitted by a nonresident vendor that has an affiliate or subsidiary that employs at least twenty Missouri residents and has maintained its headquarters or principle place of business in Missouri, and for the purposes of completing the bid project, employs an average of at least seventy-five percent of Missouri residents continuously over the entire term of the project. Such residents shall have resided in the state continuously for at least two years immediately preceding the date on which the bid is submitted. Such vendor shall provide reasonable and reliable verification as to comply with the residency requirements established in this section and shall submit a written claim for preference at the time the bid is submitted;

(5) The bid is submitted by any vendor that provides written verification that the end use of the tires collected during the project will be for fuel purposes or for the manufacture of a useable good or product.

[260.342. The department of natural resources shall collect and disseminate information and conduct educational and training programs that assist in the implementation of sections 260.200 to 260.345. The information and programs shall be designed to enhance district, county and city solid waste management systems and to inform the public of the relationship between an individual's consumption of goods and services, the generation of different types and quantities of solid waste and the implementation of solid waste management priorities under sections 260.200 to 260.345. Educational information shall also address other environmental concerns associated with solid waste management including energy consumption and conservation; air and water pollution; and land use planning. The department of natural resources may cooperate with the department of elementary and secondary education for the purpose of developing specific educational curriculum and programs. The information and programs shall be prepared for use on a statewide basis for the following:

- (1) Municipal, county and state officials and employees;
- (2) Kindergarten through post-baccalaureate students and teachers;
- (3) Private solid waste scrap brokers, dealers and processors;
- (4) Businesses which use or could use recycled materials or which produce or could produce products from recycled materials, and persons who support or serve these businesses; and
- (5) The general public.]

Section B. Because of the need to protect the state's environment, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and

approval.

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